



TWINNING COVENANT

Italy - Czech Republic

Capital Markets Legislation and Regulation

REFERENCE NO. CZ02/IB/OT/01

MS Administrative Authority
Ministry of Economy and Finance – Department of the Treasury

Mandated Bodies
CONSOB
Banca d'Italia

CC Administrative Authorities
Ministry of Finance
Securities Commission



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TWINNING COVENANT
CAPITAL MARKETS LEGISLATION & REGULATION

REFERENCE NO. CZ02/IB/OT/01

Between the administrative authority of the Czech Republic, hereafter referred to as the "Candidate Country" or "CC", represented by the Ministry of Finance in the person of the Deputy Minister, Mr. Jaroslav ŠULC, who entrusts the implementation of the present Covenant to Mr. Jiri SPICKA,

on the one part

And the Government of Italy, hereafter referred to as the "Member State" or "MS", represented by the Ministry of Economy and Finance, Department of the Treasury, in the person of the Head of Department of the Treasury, who entrusts the implementation of the present Covenant to Mr. Roberto ULISSI,

on the other part

THE FOLLOWING COVENANT HAS BEEN AGREED:

TITLE I. PURPOSE AND OBJECTIVES OF THE TWINNING PROJECT:
ACQUIS COMMUNAUTAIRE UNDERPINNING THE PROJECT
AND PRACTICAL RESULT TARGETED

Article 1. Objective (*guaranteed result*)

The aim of the project is to provide the Candidate Country with a complete assessment of national capital market legislation taking into consideration the applicable Acquis Communautaire and best international practice, in order to align the Czech capital market legislation with the considered Acquis Communautaire. The



project also aims to provide CC with the definition of a high level solution for the institution of a Central Depository System (CSD) and its regulatory and operational framework; the specifications for a database to be used as a platform for the implementation in the Czech Republic of "Delivery Versus Payment" (DVP) software; recommendations for strengthening legislation; and provision of adequate training and transfer of expertise to improve capital market transparency and strengthen the institutional capacity of the Czech Securities Commission in market surveillance. The Beneficiaries of these activities (described in detail in Arts. 3 and 5) will be the Ministry of Finance of the Czech Republic and the Czech Securities Commission.

In order to achieve these objectives, the Italian Ministry of Economy and Finance will cooperate with other Institutions – as detailed in Art. 5.1. - to provide experts able to meet the requirements of CC. The role of each partner in the Project is detailed in Art. 5.

Article 2. Acquis Communautaire

2.1. Stock exchange and financial services

The following documentation will be considered:

- Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, *OJ L 168, 27/06/2002 P. 0043 - 0050*;
- Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering - *Commission Declaration Official Journal L 344, 28/12/2001 P. 0076 - 0082*;
- Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in Euro, *Official Journal L 344, 28/12/2001 P. 0013 - 0016*;
- 2001/528/EC: Commission Decision of 6 June 2001 establishing the European Securities Committee (Text with EEA relevance) (notified under document number C (2001) 1493) *OJ L 191 13.07.2001 p.45*;



- 2001/527/EC: Commission Decision of 6 June 2001 establishing the Committee of European Securities Regulators (Text with EEA relevance) (notified under document number C (2001) 1501) *OJ L 191 13.07.2001 p.43*;
- Directive 2001/108/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), with regard to investments of UCITS, *OJ L 041, 13/02/2002 P. 0035 - 0042*;
- Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses, *Official Journal L 041, 13/02/2002 P. 0020 - 0034*;
- Directive 2000/64/EC of the European Parliament and of the Council of 7 November 2000 amending Council Directives 85/611/EEC, 92/49/EEC, 92/96/EEC and 93/22/EEC as regards exchange of information with third countries *OJ L 290, 17/11/2000 P. 0027 – 0028*;
- Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities *OJ L 184 06.07.2001 p.1*;
- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) *OJ L 178, 17/07/2000 P. 0001 - 0016*;
- Directive 98/33/EC of the European Parliament and of the Council of 22 June 1998 amending Article 12 of Council Directive 77/780/EEC on the taking up and pursuit of the business of credit institutions, Articles 2, 5, 6, 7, 8 of and Annexes II and III to Council Directive 89/647/EEC on a solvency ratio for credit institutions and Article 2 of and Annex II to Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions *OJ L 204, 21/07/1998 P. 0029 – 0036*;



- Directive 98/31/EC of the European Parliament and of the Council of 22 June 1998 amending Council Directive 93/6/EEC on the capital adequacy of investment firms and credit institutions *OJ L 204 , 21/07/1998 P. 0013 – 0025*;
- Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems *OJ L 166, 11/06/1998 P. 0045 - 0050*;
- Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes *OJ L 084 26.03.1997 p.22*;
- Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers, *Official Journal L 043, 14/02/1997 P. 0025 - 0030*;
- European Parliament and Council Directive 95/26/EC of 29 June 1995 amending Directives 77/780/EEC and 89/646/EEC in the field of credit institutions, Directives 73/239/EEC and 92/49/EEC in the field of non- life insurance, Directives 79/267/EEC and 92/96/EEC in the field of life assurance, Directive 93/22/EEC in the field of investment firms and Directive 85/611/EEC in the field of undertakings for collective investment in transferable securities (Ucits), with a view to reinforcing prudential supervision *OJ L 168 , 18/07/1995 P. 0007 – 0013*;
- Agreement on the European Economic Area - Annex IX - Financial services - List provided for in Article 36 (2) *OJ L 001 03.01.1994 p.403*;
- Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field *OJ L 141 11.06.1993 p.27*;
- Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investments firms and credit institutions *OJ L 141, 11/06/1993 P. 0001*;
- Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, *Official Journal L 166 , 28/06/1991 P. 0077 - 0083*;
- Council Directive 89/592/EEC of 13 November 1989 coordinating regulations on insider dealing *OJ L 334 18.11.1989 p.30*;



Council Directive 89/298/EEC of 17 April 1989 coordinating the requirements for the drawing-up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public *OJ L 124 05.05.1989 p.8*;

- 85/612/EEC: Council Recommendation of 20 December 1985 concerning the second subparagraph of Article 25 (1) of Directive 85/611/EEC *OJ L 375 31.12.1985 p.19*;
- Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) *OJ L 375 31.12.1985 p.3*;

Council Directive No. 82/121/EEC of 15 February 1982 on the information to be published on a regular basis by companies whose shares are admitted to official stock exchange listing;

- 77/534/EEC: Commission Recommendation of 25 July 1977 concerning a European code of conduct relating to transactions in transferable securities *OJ L 212 20.08.1977 p.37*;

2.2. Other:

The following documents will also be taken into consideration:

- 2002/85/EC: Council Decision of 28 January 2002 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Czech Republic *Official Journal L 044, 14/02/2002 P. 0020 - 0028*;
- The Lamfalussy Report;
- IOSCO Principles;
- CESR recommendations (esp. Standards for Alternative Trading Systems);
- IMF and WB Financial Sector Assessment Program (FSAP) of the Czech Republic 2000 - 2001;
- Peer Review of Financial Sector Supervision 2002 - Final Report;

Article 3. Contents of the twinning project.

3.1. Background information and institutional framework



- The Czech Ministry of Finance (MoF) is the main state body responsible for the legislation of capital markets, including financial services, collective investment, securities.
- The Securities Commission (SEC) has been the regulatory authority responsible for supervising the capital market since April 1998. It was created and its role was defined by Act No. 15/1998 Coll., on the Securities Commission, and the special Acts. The most recent amendments to this Act and related Acts which established the main legislative activities of the SEC (issuing of decrees and related implementing Acts) have come into force.
- The activity of banks is subject to SEC supervision when:
 - a) the banks act as securities traders;
 - b) the banks act as depositories for investment companies, investment funds and pension funds;
 - c) the banks' activities include the issuance of investment instruments;
 - d) the banks are acting pursuant to the maintenance of a certain part of the records of the Securities Centre (SCP).
- The activities of pension funds and insurance undertakings are subject to SEC supervision insofar as the funds and insurance undertakings are subject to obligations when investing in investment instruments or trade in investment instruments on their own account.
- In exercising its authority over banks, the SEC must not interfere with the authority of the banking supervision bodies established pursuant to the Act on the Czech National Bank. The same applies to the MoF and its exercise of state supervisory powers according to the MoF's responsibilities and other legislative provisions governing the activities of the pension funds and insurance undertakings.
- The SEC is independent as far as its supervision and decision-making activities are concerned. The SEC is financed by the State budget. Standard procedures for budgetary processes are applicable. It participates in the drafting of government bills regarding the capital market.
- The powers of the MoF in supervising the pension funds and insurance undertakings are conferred by the Supplementary Pension Insurance with State



Contributions Act, and the Insurance Industry Act. According to the Competency Act the MoF is the central government authority for the financial market, with the exception of the supervision of the capital market, which falls under the remit of the SEC.

- The MoF is responsible for the capital market legislation, i.e. issuing Acts on capital market.
- The Securities Centre (SCP) is a legal entity, established by the MoF and regulated by a special law. It must keep record of:
 - a) book-entered securities, changes in their ownership and other information relating to them;
 - b) immobilised securities, changes in their ownership and other information related to them;
 - c) other details, as required by law.
- Records of book-entered securities are kept by the SCP on accounts of their owners and in a register of securities issuers.

Further information can be found in the Annual Report of the Securities Commission.

3.1.1. List of existing financial market legislation:

Laws:

- Act No. 591/1992 Coll., **on Securities** (as amended);
- Act No. 248/1992 Coll., **on Investment Companies and Investment Funds** (as amended);
- Act No. 15/1998 Coll., **on the Securities Commission** (as amended);
- Act No. 214/1992 Coll., **on the Stock Exchange** (as amended);
- Act No. 530/1990 Coll., **on Bonds** (as amended);
- Act No. 513/1991 Coll., **Commercial Code**, as amended (limited to provisions on joint stock companies).

Implementing decrees:



- Decree of Ministry of Finance No. 88/1993 Coll., as amended by Decree No. 375/2001 Coll., on details of technical realisation of publicly tradable materialized securities;
- Decree of Ministry of Finance No. 207/1998 Coll., as amended by Decree No. 177/2002 Coll., on calculation of value of securities in shares fund and investment fund assets;
- Decree of Ministry of Finance No. 82/2001 Coll., which defines minimal requirements of prospectus and tight prospectus;
- Decree of Ministry of Finance No. 105/2001 Coll., on reporting of transactions with investment instruments transacted out of public (regulated) market;
- Decree of Ministry of Finance No. 305/2001 Coll., on broker's examination;
- Decree of Ministry of Finance No. 362/2001 Coll., which regulates detailed rules for determination and payment of remuneration for discharge of an office of sequestrator and liquidator of investment company or investment fund;
- Decree of Ministry of Finance No. 17/2002 Coll., which defines form, term and manner of publishing quotations of capital market instruments;
- Decree of Ministry of Finance No. 178/2002 Coll., on detailed rules on information obligations concerning changes in the holding of voting capital.

3.1.2. Legislation to be approved:

The Government plans to enact the following legislation:

- Act on Capital Market Undertakings;
- Act on Collective Investment;
- Act on Bonds.

The drafts of Act on Collective Investment and Act on Bonds were presented to the Government in December 2002 and the Act on Capital Market Undertakings will be probably presented in March – April 2003. The approval process will last at least six months.

The above-mentioned legislation will be followed by implementing provisions.



The time schedule for approval of implementing regulations will be indicated by the CC as soon as it is defined by the Government.

3.2. Activities

The main components of the project will be:

- 3.2.1. Technical assistance for the fine-tuning of capital market legislation to bring it in line with selected EU legislation;
- 3.2.2. Training activities;
- 3.2.3. Study visits;
- 3.2.4. Technical Assistance for the definition of high level solution for the institution of a Central Depository System (CSD) and its regulatory and operational framework;
- 3.2.5. Preparation of specifications for a database, which will be used as a platform for the implementation in the Czech Republic of "Delivery Versus Payment" (DVP) Software.

3.2.1. *Technical assistance for the fine-tuning of capital market legislation to bring it in line with EU legislation.*

The purpose of this component is to provide CC with the technical assistance required to assess the consistency of new legislation (limited to the Acts referred to in Art. 3.1.2.) with the Acquis Communautaire mentioned below. This will involve consultations between MS experts and officials from the MoF and SEC, comparative and analytic studies, recommendations and proposals for amendments.

A methodology for the assessment of the possible effects of regulatory policy and legislative actions will be provided. MS experts will outline organisational and technical proposals in this field, according to Regulatory Impact Analysis, OECD recommendations and best practice, with possible reference to the regulation of cross-border transactions.

In this area, MS will perform and limit the assessments considering the following EU legislation:



- Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, *OJ L 168, 27/06/2002 P. 0043 - 0050*;
- Regulation (EC) No 2560/2001 of the European Parliament and of the Council of 19 December 2001 on cross-border payments in Euro, *OJ L 344, 28/12/2001 P. 0013 - 0016*;
- Directive 2001/108/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), with regard to investments of UCITS, *OJ L 041, 13/02/2002 P. 0035 - 0042*;
- Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses, *OJ L 041, 13/02/2002 P. 0020 - 0034*;
- Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities (*) *OJ L 184 06.07.2001 p.1*;
- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) *OJ L 178, 17/07/2000 P. 0001 - 0016*;
- Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems. *OJ L 166, 11/06/1998 P. 0045 - 0050*;
- Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor compensation scheme. *OJ L 084 26.03.1997 p.22*;



- Directive 97/5/EC of the European Parliament and of the Council of 27 January 1997 on cross-border credit transfers, *OJ L 043, 14/02/1997 P. 0025 - 0030*;
- Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field. *OJ L 141 11.06.1993 p.27*;
- Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions. *OJ L 141, 11/06/1993 P. 0001*;
- Council Directive 89/592/EEC of 13 November 1989 coordinating regulations on insider dealing. *OJ L 334 18.11.1989 p.30*;

Council Directive 89/298/EEC of 17 April 1989 coordinating the requirements for the drawing-up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public. *OJ L 124 05.05.1989 p.8; (*)*;

- Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (**UCITS**). *OJ L 375 31.12.1985 p.3*;
- Council Directive No. 82/121/EEC of 15 February 1982 on the information to be published on a regular basis by companies whose shares are admitted to official stock exchange listing. (*)

(*) The assessments concerning Directive, No. 82/121/EEC, No., No. 89/298/EEC and No. 2001/34/EC will be limited to general principles.

The following benchmarks will be considered:

- Assessment of the relevant legislation, providing all necessary tools to enable the CC to discuss the above-mentioned new legislation within the Government and the Parliament, to improve the legislation on the powers and responsibilities of the Czech Securities Commission. (**Benchmark no. 1 – assessment of legislation**).
- The assessments will be used as a basis for further discussions, to draft comparative and analytical reports/tables and to prepare a training action plan (**Benchmark no. 2 – comparative/analytical tables - training action plan**).



- The reports/tables will illustrate EU legislation and the implementation of this legislation in selected EU States and will provide an interpretation of the relevant EU directives. The reports and the assessments will then form the basis of recommendations on legislation (***Benchmark no. 3 – recommendations***).
- Following these recommendations and further discussion with CC, proposals for amendments will be drafted if required. (***Benchmark no. 4 – eventual – proposals for amendments***).

A. Assessment of legislation

A.1. Legal analysis of new laws (Beneficiaries: MOF and SEC)

Examination of the new Czech capital market legislation (limited to legislation mentioned in Art. 3.1.2) will ensure its compliance with the Acquis Communautaire mentioned in 3.2.1.

Activities will include a review of the indicated draft legislation to identify gaps and weaknesses. The analysis will involve a comparison of the Czech legal framework with the laws and best practice of the EU and Member States.

A.2. Analysis of existing laws (Beneficiary: SEC)

Assessment of the legislation mentioned in Art. 3.1.1. with reference to the powers, rights and responsibilities of the SEC relating to cross-border transactions, e-business and the monitoring of capital market transactions.

A.3. Regulatory Impact Analysis (RIA) (Beneficiaries: MoF and SEC)

The methods of implementing a Regulatory Impact Analysis (RIA) will be explained to CC, in accordance with the recommendations of the OECD (on better regulation). To enable the beneficiaries to perform this kind of assessment, the CC will provide MS experts with the most up to date reports on the Czech Republic's economic situation. The RIA methodology will be presented as a case study on a selected



piece of regulation to be agreed upon by the parties, to provide CC with the tools needed for further analysis on capital market legislation. MS will consider involving other Czech Institutions as the Charles University in Prague, in the implementation of RIA (either under A.3. and C.3. below), especially for interviews, delivery of questionnaires and surveys and other similar activities.

CODE	ACTIVITY	DESCRIPTION	DAYS	HUMAN RES.	PERIOD
A.1.	Legal analysis of new laws	Examination of the new Czech capital market legislation (limited to legislation mentioned in Art. 3.1.2) to ensure its compliance with the Acquis Communautaire mentioned in 3.2.1. Activities will include a review of the draft legislation to identify gaps and weaknesses; the analysis will involve comparison of the Czech legal framework with the laws and best practice of the EU and Member States.	14	1/2 civil servant from the MEF 1/2 junior expert from Mandated Body	T1-T6
Total man/days A.1.			14		
A.2.	Legal analysis of existing laws	Assessment of the legislation mentioned in Art. 3.1.1. with reference to the powers, rights and responsibilities of the SEC relating to cross-border transactions, e-business and the monitoring of capital market transactions.	12	1/2 civil servant from the MEF 1/2 junior expert from Mandated Body	T1 – T6
Total man/days A.2.			12		
A.3.	Economic analysis – Regulatory Impact Analysis	The methods of implementing a Regulatory Impact Analysis (RIA) will be explained to CC, in accordance with the recommendations of the OECD (on better regulation) To enable the beneficiaries to perform this kind of assessment the CC will provide MS experts with the most up to date reports on the Czech Republic's economic situation. The RIA methodology will be presented as a case study on a selected piece of regulation to be agreed upon by the participants, to provide CC with the tools needed for further analysis on capital market legislation. MS will consider involving other Czech Institutions as the Charles University in Prague, in the implementation of RIA (either under A.3. and C.3. below) especially for interviews, delivery of questionnaires and surveys and other similar activities	12	1/2 civil servant from the MEF 1/2 junior expert from Mandated Body	T5 – T8
Total man/days A.3.			12		
Total man/days A.			36	Period	T1 – T8

Outputs:

- Assessment report on the new Acts on Capital Market Undertakings, Collective Investments and Bonds and their relevant implementing provisions;
- Assessment report on SEC powers and responsibilities for cross-border transactions, e-business and the monitoring of capital market transactions;



- Workshop on RIA methodology applied to a selected piece of regulation to be agreed upon by the parties.

B. Consultations and drafting Reports

Based on the assessments performed under A.1, MS and CC experts will meet to discuss and define the CC’s needs.

These discussions will seek to:

- identify weaknesses in the assessed legislation;
- identify actions that may be taken to increase SEC powers;
- identify the tools required for a complete understanding of EU legislation and for the discussion of the new legislation within the Government and with the Parliament (e.g. analytical reports, comparative tables, explanatory notes).

A training action plan will be drawn up to detail the issues and topics to be covered in seminars and training activities.

CODE	ACTIVITY	DESCRIPTION	DAYS	HUMAN RES.	PERIOD
B.1.	Consultations with CC experts – definition of areas of intervention	Based on the results of A.1. MS and CC will meet to define objectives and priorities	12	1/2 civil servant from the MEF 1/2 junior expert from Mandated Body	T3-T10
Total	man/days B.1.		12		
B.2.	Drafting Report and Tables	Draft of analytical and comparative tables on specific capital market issues to be defined under B.1.	12	1/2 civil servant from the MEF 1/2 junior expert from Mandated Body	T7-T10
Total	man/days B.2.		12		
B.3.	Drafting EU directives explanatory notes	Draft explanatory and interpretation notes on the EU directives defined under B.1.	16	1/2 civil servant from the MEF 1/2 junior expert from Mandated Body	T7-T12
Total	man/days B.3.		16		
Total.	man/days B.		40	Period	T3 - T 12

Outputs:

- Training action plan;
- Legal advice on specific issues requested by CC;



- Comparative and analytical studies on specific issues;
- Interpretation reports and explanatory memoranda for EU directives

C. Recommendations

Based on the assessments performed under A and the results of B, MS will provide CC with recommendations on:

- C.1. The fine-tuning of the new laws, to bring them in line with the Acquis Communautaire;
- C.2. Strengthening and improving the effectiveness of regulation concerning the SEC;
- C.3. The adoption of specific Regulatory Impact Analysis tools.

CODE	ACTIVITY	DESCRIPTION	DAYS	HUMAN RES.	PERIOD
C.1.	Drafting recommendations on the fine tuning of new legislation	Based on the assessments performed under A and results of B, MS experts will draft recommendations on how to fine tune the new laws in order to render them compliant with the considered Acquis Communautaire	12	1/2 civil servant from the MEF 1/2 junior expert from Mandated Body	T7-T11
Total man/days C.1.			12		
C.2.	Drafting recommendations on how to strengthen and improve the effectiveness of the assessed laws	Based on the assessments performed under A and results of B, MS experts will draft recommendations on strengthening and improving the effectiveness of regulation concerning the SEC	12	1/2 civil servant from the MEF 1/2 junior expert from Mandated Body	T7-T11
Total man/days C.2.			12		
C.3.	Regulatory Impact Analysis – Final phase	These activities concern the Final Phase of RIA. The assessment performed under A.3. and further developed by CC officials will be reviewed by MS experts which will develop together the results of the assessment. From such assessments the adoption of specific tools of Regulatory Impact Analysis will be proposed.	12	2 civil servant from the MEF	T11-T14
Total man/days C.3.			12		
Total.	man/days C.		38	Period	T7 - T 14

Outputs:

- Reports on the new laws compliance with the Acquis Communautaire;
- Recommendations;
- Regulatory Impact Analysis – final phase.

D. Proposals for amendments



MS and CC will meet to discuss the results produced under C.

Based on the results under A and B and the recommendations expressed under C, upon specific request by CC, MS experts will propose recommendations for amendments to relevant legislation in order to:

- D.1. Harmonise the CC legal framework with the Acquis Communautaire mentioned in 3.2.1.;
- D.2. Improve the effectiveness of the legal framework of the SEC powers on cross-border transactions and e-business.

CODE	ACTIVITY	DESCRIPTION	DAYS	HUMAN RES.	PERIOD
D.1.	Drafting amendments for harmonization	Based on the results under A and B and the recommendations expressed under C, upon specific request by CC, MS experts will propose recommendations for amendments to relevant legislation in order to harmonize the CC legal framework with the Acquis Communautaire mentioned in Art. 3.2.1.	8	1/2 civil servant from the MEF 1/2 junior expert from Mandated Body	T9-T15
Total Man/days D.1.			8		
D.2.	Drafting amendments for improvement	Based on the results under A and B and the recommendations expressed under C, upon specific request by CC, MS experts will propose recommendations for amendments to relevant legislation to improve the effectiveness of the legal framework concerning the SEC powers on cross-border transactions and e-business	12	1/2 civil servant from the MEF 1/2 junior expert from Mandated Body	T9-T15
Total Man/days D.2.			12		
Total. man/days D.			20	Period	T9 – T15

Outputs:

- Final report on the harmonization of CC capital market legislation with the Acquis.
- Proposals and guidelines for amendments.

3.2.2. Training

The purpose of this component is to provide the CC officials with the necessary skills to interpret the relevant EU Directives relating to capital market and cross-border transactions, according to the latest EU requirements. Training may also focus on the



latest position of the EU institutions (i.e. proposals for amendments to the relevant legislation). Training will focus also on inspection activities.

At every seminar/workshop, a booklet containing the relevant documentation (where possible translated into Czech) will be distributed to all participants. The booklet will contain reports of previous activities (see benchmarks no. 1, 2 and 3) (***Benchmark no. 5 - implementation of seminars and delivery of relevant explanatory documentation***).

Eight training events will take place at the MoF or SEC.

The issues to be addressed during training events will further defined under the training action plan (benchmark no. 2) and will include:

1. Status of MS financial system: separation of powers and responsibilities; role of Ministry of Economy and Finance, CONSOB and central depositories. role and involvement of interested organisations, such as banks, brokers and investment companies (approximately 20 trainees).
2. Regulation of collective investment undertakings: interpretation of relevant EU directives (UCITS) (approximately 20 trainees).
3. Cross-border transactions. Emphasis will be given on supervision activities, detection of suspicious transactions and practical experience. Training will also be available for officials of the Czech National Bank (CNB) and other institutions (approximately 50 trainees).
4. E-business: interpretation of relevant EU directives (ISD directive, e-commerce directive); best international practice, cases and documentation rules (approximately 20 trainees).
5. Alternative trading systems (ATS) (also considering CESR Standards for ATS): licensing requirements, surveillance of activities and monitoring of transactions, transparency requirements, prevention of market abuses (approximately 20 trainees).



6. Role and regulation of central depositories: emphasis on the creation of a new DVP and on clearing houses (approximately 15 trainees).
7. Regulation of brokers/dealers: emphasis on capital adequacy; risk management and custodianship (approximately 20 trainees).
8. Monitoring of transactions: interpretation of relevant EU directives (on insider trading - dir. 89/592/CEE, money laundering - dir. 2001/97/CE and, if possible, the new directive on market abuse), the experience of other EU MS, the manipulating schemes and the implementation of the insider trading directive. Those issues might also be assessed in the view of the new directive on market abuse. (approximately 15 trainees).

CODE	ACTIVITY	DESCRIPTION	DAYS	HUMAN RES.	PERIOD
1.	Seminar on status of EU financial system	Status of MS financial system: separation of powers and responsibilities; role of Ministry of Economy and Finance, CONSOB and central depositories. role and involvement of interested organisations such as banks, brokers and investment companies (approximately 20 trainees).	9	1/2 civil servant from the MEF 1/2 junior/senior expert from Mandated Body	T3-T5
Total man/days 1			9		
2.	Seminar on collective investments	Regulation of collective investment undertakings: interpretation of relevant EU directives (UCITS) (approximately 20 trainees).	9	1/2 civil servant from the MEF 1/2 junior/senior expert from Mandated Body	T5-T7
Total man/days 2			9		
3.	Seminar on cross border transactions	Cross-border transactions. Practical advice will be given on supervision activities and detection of suspicious transactions. Training will also be available for officials of the CNB and other institutions (approximately 50 trainees).	9	1/2 civil servant from the MEF 1/2 junior/senior expert from Mandated Body	T7-T9
Total man/days 3			9		
4.	Seminar on e-business	E-business: interpretation of relevant EU directives (ISD directive, e-commerce directive); best international practice, cases and documentation rules (approximately 20 trainees).	9	1/2 civil servant from the MEF 1/2 junior/senior expert from Mandated Body	T9-T11
Total man/days 4			9		
5.	Seminar on alternative trading systems	Alternative trading systems (also considering CESR Standards for ATS): licensing requirements, surveillance of activities and monitoring of transactions; transparency requirements; prevention of market abuses (approximately 20 trainees).	9	1/2 civil servant from the MEF 1/2 junior/senior expert from Mandated Body	T11-T13



Total man/days 5			9		
6.	Seminar on regulation of central depositories	Role and regulation of central depositories: emphasis on the creation of a new DVP system and on clearing houses (approximately 15 trainees).	9	1/2 civil servant from the MEF 1/2 junior/senior expert from Mandated Body	T14-T15
Total man/days 6			9		
7.	Seminar on regulation of brokers/dealers with stress on the capital adequacy and risk management	Regulation of brokers/dealers: emphasis on capital adequacy; risk management and custodianship (approximately 20 trainees).	9	1/2 civil servant from the MEF 1/2 junior/senior expert from Mandated Body	T15-T17
Total man/days 7			9		
8.	Seminar on monitoring of transactions	Monitoring of transactions: interpretation of relevant EU directives ((on insider trading - (dir. 89/592/CEE), money laundering - (dir. 2001/97/CE) and, possibly, the new directive on market abuse) The experience of other EU MS, the manipulating schemes and; the implementation of the insider trading directive. Issues might also be assessed in the view of the new directive on market abuse (approximately envisaged about 15 trainees).	12	1/2 civil servant from the MEF 1/2 junior/senior expert from Mandated Body	T17-T18
Total man/days 8			12		
Total. man/days 3.2.2.			75	Period	T3 - T18

** period might change upon considerations expressed in the Training Action Plan benchmark no. 2)*

Outputs:

- Seminars/workshops/conferences;
- Information booklets.

3.2.3. Study visits

The purpose of this component is to provide CC experts with complementary training in the MS to enable fully understanding the practices and methods implemented in the MS, which have been previously addressed in the seminars and conferences in the CC (see Art. 3.2.2.). These study visits will provide a necessary complement to the training activities described in Art. 3.2.2, by providing participants with a concrete understanding of the relevant issues. The study visits will include activities such as internships, visits to MS stock exchange, interviews with representatives of MS regulators, listed companies, funds and other collective investment institutions.

CC officials who participate in study visits must have a good knowledge of either English or Italian.



Six study visits will be arranged.

One study visit will take about two weeks and will involve 2 CC Officials from the SEC. The study visit will take place at CONSOB (*National Commission for Joint Stock Companies and the Stock Exchange*) or Banca d'Italia.

Five study visits will last three-four days and will be directed to six CC Officials (four people from SEC, two from MoF). Workshops will be organised. The study visits will take place at MTS (*regulated market for Italian government bonds*), Ministry of Economy and Finance, Borsa Italiana (*The Italian Stock Exchange*), Montetitoli (*The Italian central securities depository*), Cassa di Compensazione e Garanzia (*Italian Clearing House*), Banca d'Italia (*Italy's Central Bank*) and CONSOB (*National Commission for Joint Stock Companies and the Stock Exchange*) according to the needs of CC as defined in the Training Action Plan and the availability of the above mentioned MS Institutions.

These study visits will therefore address the same subjects dealt with in the training sessions (see Art. 3.2.2.) (**Benchmark no. 6 - study visits implemented**).

CODE	ACTIVITY	DESCRIPTION	DAYS	CC CIVIL SERVANTS	PERIOD*
1	study visit 1	Study visit of about two weeks, to visit Italian regulators and other players in the financial market.	n/a	2 from SEC	T3 - T5
Total man/days 1			n/a		
2	study visit 2	Study visit to the Italian Ministry of Economy and Finance and CONSOB. Interviews with Funds manager. Outline of the regulation of UCITS.	n/a	4 from SEC and 2 from MoF	T6 - T7
Total man/days 2			n/a		
3.	study visit 3	Study visit at the Italian Central Depository (Montetitoli and Cassa di Compensazione e Garanzia). During this visit the operation, structure and role of the CSD and other parties will be outlined	n/a	4 from SEC and 2 from MoF	T8 - T9
Total man/days 3			n/a		
4.	study visit 4	Study visit at Borsa Italiana, MTS and CONSOB. Overview of alternative trading system.	n/a	4 from SEC and 2 from MoF	T10 - T 11



Total	man/days 4		n/a		
5.	study visit 5	Study visit at Banca d'Italia. Overview of monitoring of transaction, capital adequacy and risk management	n/a	4 from SEC and 2 from MoF	T 12 - T13
Total	man/days 5		n/a		
6.	study visit 6	Study visit at the Italian Ministry of Economy and Finance. Overview of national legislation. Interviews with main operators in the system.	n/a	4 from SEC and 2 from MoF	T 15 - T 18
Total	man/days 6		n/a		
Total.	man/days 3.2.3.		n/a	Period	T3 - T 18

* period might change according to the Training Action Plan (benchmark no. 2).

Outputs:

- Study visits implemented;
- MS practical expertise and documentation delivered;
- Procedures of interest explained and discussed.

3.2.4. Technical Assistance for the definition of high level solution for the institution of a Central Depository System (CSD) and its regulatory and operational framework

3.2.4.1. Methodological remarks

Activities and recommendations under this component will take into account the relevant EU directives, developments other European Countries and the recommendations of European Institutions: the European Monetary Institution Standards for Securities Settlement Systems, the Lamfalussy Report, the ECSDA recommendations, the IOSCO recommendations and findings.

3.2.4.2. Detailed Activities

This component will require the following activities:

- A. Preliminary collection of relevant documentation;
- B. Legal and technical analysis of the current situation;
- C. Comparison of the Czech system with the Italian and other European systems;
- D. Analysis of legal, institutional and technological issues related to the creation of a CSD in the Czech Republic;
- E. Drafting recommendations;



F. Detailed analysis of the high-level solution for the institution of a CSD and its regulatory and operational framework.

* * * *

A. *Preliminary collection of relevant documents.*

Activities will define a concrete starting point and develop a complete understanding of the existing situation. CC will provide MS with all relevant information and documentation within T-2. This activity will provide input for the following activities.

B. *Legal and technical analysis of the current situation*

This sub-component will analyze material, documentation and information obtained under A and use interviews and round tables to provide an assessment of the CC legal and technical situation.

Activities will be broken down into two major areas:

B.1. *Legal analysis:*

- **Institutional aspects:** administrations involved in the creation of the CSD;
- **Legal aspects, rules and procedures:** laws and other rules regulating the registration, clearing, settlement and management of financial transactions;

B.2. *Technical analysis:*

- **Data analysis:** the analysis of the data stored in the system and their structure.
- **System & network analysis:** the identification of the current system and network structure.

CODE	ACTIVITY	DESCRIPTION	Man/Days	HUMAN RES.	PERIOD
A.	Background and reference material collection	Preliminary collection of relevant documents produced as a result of previous studies and surveys	8	MEF	T1-T2
Total	man/days A.		8		
B.1.	Legal analysis of the current situation	Institutional aspects: administrations involved in the creation of the CSD; Legal aspects rules and procedures: laws and other rules on the registration, clearing, settlement and management of financial transactions;	10	MEF	T2-T5
B.2.	Technical analysis of the current situation:	Data analysis: the analysis of the data stored in the system and its their structure.	10	MEF	T2-T5



		System & network analysis: the identification of current system and network structure.			
Total	man/days B.		28		T1 - T5

Outputs:

- Inception report (**Benchmark no. 7**)
- Reference list of documentation;
- Report on the legal and technical analysis (**Benchmark no. 8**)

C. Comparison of the Czech system with the Italian and other European systems.

This activity will be broken down into two main areas of activity:

C.1. Legal/procedural aspects:

This activity will identify best practice and regulations in other European Countries, and compare them with the present situation in the CC.

C.2. Technical aspects:

This activity will identify best practice and system implementation in other European Countries, and compare them with the present situation in the CC.

Outputs of activities A and B will provide some of the required information

CODE	ACTIVITY	DESCRIPTION	Man/Days	HUMAN RES.	PERIOD
C.1.	Legal/procedural aspects	This activity will identify best practice and regulations in other European Countries, and compare them with the present situation in the CC.	8	MEF	T4-T9
C.2.	Technical aspects	This activity will identify best practice and system implementation in other European Countries, and compare them with the present situation in the CC.	8	MEF	T4-T9
Total	man/days C		16		T4 - T9

Outputs:

- Report on the Italian system;
- An overview report on the different legal and technical regulations and practices in Europe (**Benchmark no. 9 - Comparative Report**)



D. Analysis of legal, institutional and technological issues related to the creation of CSD in the Czech Republic

In the light of the issues dealt with in the previous activities, and taking into account the Czech strategic orientations, MS will focus on the analysis of the following issues to be clarified for the institution of a CSD in the Czech Republic (CC will clarify its options on the basic institutional framework for creation of CSD within T-3):

- relations between the institutions involved;
- governance of the institutions involved;
- impact on market participants;
- scope and mandate of the institutions involved (with particular attention to the exclusivity of their functions and other accessory activities);
- status of the institutions involved;
- level of capitalization (also in connection with the activities performed);
- operational procedures (i.e. procedures for keeping accounts, persons authorized to open accounts within the system; procedures for granting authorizations for participation in the system; possible outsourcing of operations and to what extent; handling "dead" accounts of investors coming from vouchers privatization; how to access the CERTIS);
- CSD membership principle and legal monopoly;
- legal framework for securities transfer;
- procedure for setting liens on securities;
- Insolvency legislation;
- assessment of the distribution of functions, role and responsibilities between MoF, Central Bank and SEC, including supervision on their activities;

The extent of the analysis will be agreed between the MS and CC.

CODE	ACTIVITY	DESCRIPTION	Man/Days	HUMAN RES.	PERIOD
D	Analysis of issues related to the creation of CSD in the Czech Republic (legal, institutional)	In the light of the outputs and issues dealt upon within the previous activities, and taking into account Czech strategic orientations, MS will focus on the analysis of issues to be clarified for the institution of a CSD in the Czech Republic.	32	MEF	T4-T13



	and technological issues);			
Total	man/days D		32	T4-T13

Outputs:

- Reports on issues dealt with. (**Benchmark no. 10**)

E. Drafting recommendations;

On the basis of the activities performed under subcomponent D and taking into account findings under Art. 3.2.1., this subcomponent will formulate recommendations on the structure and functions of the CSD (**Benchmark no. 11 – Recommendations**), to be discussed with CC, in order to reach a common position (high level solution for the institution of a CSD) (**Benchmark no. 12 - Common Position**). This common position must be reached within T-11.

In reaching the Common Position, CC and MS will also take into consideration the following principles:

1. Costs/benefit ratio;
2. Improvement of present systems and structures of all parties concerned (especially HW and SW);
3. Market participants other than CSD should share the access to the system as lower a cost as possible;

CODE	ACTIVITY	DESCRIPTION	Man/Days	HUMAN RES.	PERIOD
E	Drafting recommendations	On the basis of the activities performed under subcomponent D and taking into account findings under Art. 3.2.1. this subcomponent will formulate recommendations on the structure and functions of CSD to be discussed with CC, in order to reach a common position	18	MEF	T11-T16
Total	man/days E		18		T11-T16

Outputs:

- Recommendations;
- Common position on the structure and functions of CSD.



F. Detailed analysis of the high-level solution for the institution of a CSD and its regulatory and operational framework.

On the basis of the Common Position, MS will define a technical and legal framework for the institution and operation of a CSD (**Benchmark no. 13**)

CODE	ACTIVITY	DESCRIPTION	Man/Days	HUMAN RES.	PERIOD
F	Detailed analysis of the high level solution for the institution of a CSD and its regulatory and operational framework.	On the basis of the common position, MS will define a technical and legal framework for the institution and operation of a CSD	24	MEF	T13-T18
Total man/days F			24		T13-T18

Outputs:

- “Technology plan” and a “System architecture proposal”
- Indications on CSD legal framework.
- CSD operational framework.

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3.2.5. Preparation of specifications for a database, which will be used as a platform for the implementation in the Czech Republic of "Delivery Versus Payment" (DVP) Software.

For the implementation of this component, relevant outputs and results obtained under Art. 3.2.4 (activities “A” and “B”) will be considered.

It will be necessary for CC officials to provide all necessary and required documentation and information on the current situation.

CC has asked MS to deliver the first draft of specifications within May 24, 2003 (**Benchmark no 14 - specification delivered**). In order to meet deadline CC commits to providing the necessary documentation and information within the beginning of April 2003.



Once specifications are submitted, MS will be available to provide clarifications on the draft specifications, in response to possible comments by the Delegation of the European Commission to the Czech Republic.

Activities will include

- Definition and assessment of market needs;
- Architectural analysis of data-base legacy. Analysis will aim to comply with best European practices and minimum standards defined by ANNA (Association of National Numbering Agencies);
- Definition of database architecture for future CSD;

CODE	ACTIVITY	DESCRIPTION	Man/Days	HUMAN RES.	PERIOD
A	Definition and assessment of new market needs	Assessment of present situation in CC and individuation of critical areas	15	MEF	T1-T2
B	Architectural analysis of existent system's data bases	Based on findings under A, MS will undertake an analysis of the existing database for development	17	MEF	T2-T3
C	Definition of database architecture of system's data bases	Based on findings under B, MS will define the architecture of the system database to be implemented	20	MEF	T3-T4
D	Drafting of specifications	Based on previous findings, MS will prepare the first draft of specifications for the implementation of a system database as platform for the creation of the CSD	20	MEF	T4-T5
E	Clarifications on specifications (Eventual)	MS will provide assistance in any clarifications will be needed concerning the specifications for the submission of the Tender dossier.	8	MEF	T5-T6
Total man/days 3.2.5.			80		T1-T6

Outputs:

- Specifications delivered.

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3.3. Coordination with other projects:

The present project will be coordinated with the EuropeAid Phare Project Publication Ref.: EuropeAid/112289/D/SV/CZ entitled "*Capital Market Legislation & Securities Commission – Legislation and Institutional Building*", which started in November 2002, "*Capital Market Regulation: Securities Commission (SEC) & e-Business*", which started in October 2002, "*Capacity building on risk based inspections and assessments by the Securities Commission (SEC)*", which started in November 2002.



Aiming to maximize the results of the relevant activities, the Terms of Reference (TOR) and all reports and outputs of these projects will be given to MS.

The CC Ministry of Finance agrees to keep all parties informed of new projects which will be implemented under PHARE 2003, particularly in terms of additional funds which will be provided for the central depository for software and hardware. The technical assistance (including tender specification) provided under our Project should be utilised also for the PHARE 2003 Project (no technical assistance will be provided within the PHARE 2003).

The recommendations adopted under Component “F” (entitled “Corporate Governance and Capital Market”) of the Phare Twinning Project, “*Improvement of Legal and Institutional Environment for Business (Ref: CZ2000/IB/OT/02)*”, will also be taken into consideration: Component “F” provided a pre-assessment of the alignment of the Act on Collective Investment with the *Acquis Communautaire*.

The outputs and recommendations from the projects “*Support to SEC: Czech Republic*” and “*Minority Shareholders*” financed by the British Know How funds; the project “*Capital Market Reform in the Czech Republic*” completed in mid-2000 financed by Phare/EBRD, focusing on legislative amendments, structural inter-relationships with the capital market and training of SEC staff, will be delivered to MS and taken into consideration.

CC will provide MS with full copies of these reports and their recommendations before the start of the project.

3.4. Risk analysis

All these activities depend on the commitment of CC authorities to adapt their current legislation to comply with the *Acquis Communautaire*, which implies either changing the existing legal provisions or creating new ones. Continuing commitment on the part of the relevant administrative authorities of the CC to prepare for European integration and to cooperate with EU Member States in the field of the Twinning project is in fact an essential condition for the successful implementation of the



project.

The usefulness of assessment, training and definition of methodologies may be reduced by delays in the approval of legislation and other regulations.

Any change in the priorities of the CC Government or in its schedule for approval of laws and regulations, varying from the existing situation at the beginning of the project, should be considered a source of risk.

The availability of appropriate human resources from the SEC and the MoF, their involvement, coordination, ability to provide an effective CC joint project management and to agree on specific issues, take decisions and implement recommendations will affect the results of the project.

Other risk factors include:

Internal risks:

1. Delayed approval and presentation of draft laws and implementing provisions to the Government and to the Parliament;
2. Inadequate provision by the CC of organizational and logistical support for the PAA and for training activities;
3. Delayed response by CC, within the deadline indicated in the request, to issues raised by MS;
4. Lack of cooperation and limited access to information;
5. Lack of participation or motivation of the parties involved in training activities;
6. Non-availability of effective translation and interpretation services;
7. Lack of collaboration between the MoF and SEC in the implementation of recommendations;
8. Inability (due to lack of political consensus or for other reasons) to fully implement recommendations and proposals for amendments produced under the project.



9. Non-achievements by CC of the specific deadlines indicated in Arts. 3.2.4. and 3.2.5.

External risks:

10. Major changes in EU legislation during the final part of the project (which take place too late to be taken into account)

3.5. Risk management

The risks inherent in the project can be reduced or eliminated given the following commitments on both sides - the numbering corresponds to risks highlighted above:

1. Prompt warning to MS of any possible delay in submitting draft laws and implementing provisions;
2. Early schedule of events and definition of priorities by MS and CC to ensure adequate logistical and financial support;
3. Timely response by each party to the other's requests and full cooperation between Member State and Candidate Country in the implementation of the Twinning project; in order to produce the foreseen results, full commitment of CC to provide all necessary documentation and information on the actual situation is needed. In particular, CC must clarify in due course its options on the basic institutional framework for CSD (see deadlines in Art. 3.2.4).
4. Active and continuous cooperation between SEC and MoF and the PAA.
5. Early agreement of a schedule of events and commitment of CC staff to participate in the events as arranged;
6. Early organization of tenders for selection of interpretation and translation agency (in case of tender procedure);
7. same as # 4 above.
8. Communication of agreed recommendations to lawmakers – and early information to MS in the case of rejection of recommendations by the Parliament and the Government;
9. Timely analysis by CC of its specific needs and strategic options in order to



reach a formal position.

10. New EU legislation will be taken into full consideration for training activities, but might not be considered for the legislative assistance to be provided under Art. 3.2.1, also with regard to the time limits fixed by the EU directives for their implementation.

Article 4. Conditionality

The parties agree to sign and implement this Covenant upon notification of endorsement by the Commission in respect of the Phare contribution to the costs of the Project, in accordance with Article 7 and under the Financing Memorandum FG CZ 0204 “2002 Phare National Programme for the Czech Republic” signed on 24 May 2002.